



**INDIANA COURT OF APPEALS  
ORAL ARGUMENT AT A GLANCE  
KRANNERT CENTER FOR EXECUTIVE EDUCATION**

*JPMORGAN CHASE BANK, N.A. V. DESERT PALACE, INC. AND OPBIZ, LLC.*

**Appeal from:**  
Marion Superior Court  
The Honorable Gary L.  
Miller, Judge

**Oral Argument:**  
Wednesday, January 16, 2008  
10:00—11:00 a.m.  
30 minutes each side

**ISSUES:**

Did Desert Palace, Inc. (“Caesar’s”) and Opbiz, LLC (“Aladdin”) (collectively the “casinos”) have sufficient minimum contacts with Indiana to establish personal jurisdiction over the casinos?

If so, is Indiana an inconvenient forum for JPMorgan Chase Bank’s action against the casinos?

**CASE SYNOPSIS**

**Facts and Procedural  
History**

This appeal arises from the gambling activities and debts incurred by an Indiana citizen, Gerry Gilliatte (“Gilliatte”), at Desert Palace, Inc. (“Caesar’s”) and Opbiz, LLC (“Aladdin”) (together the “casinos”). From 2001 to 2006, Gilliatte played high-stake games at the casinos in Las Vegas, Nevada. During the course of Gilliatte’s gambling, he sought, and the casinos offered, markers, which were effectively blank checks to the casinos and were secured with Gilliatte’s financial holdings at JPMorgan Chase (“Chase”) in Indiana. Gilliatte went to the casinos at least once a year and accumulated hundreds of thousands of dollars in debt to the casinos. Also during that time, the casinos sent Gilliatte numerous marketing materials and offered various complimentary services to influence his return to their facilities, while at the same time asking for Gilliatte to repay his debt.

Caesar’s, through its employee, Debbie Oddo, contacted Gilliatte, several members of his family, and others, including Gilliatte General Contractors (“GGC”) (a business in which Gilliatte had a substantial interest) in Indiana to seek payment. Gilliatte’s family usually placed Oddo in touch with Gilliatte but also informed Oddo that Caesar’s would need to contact Gilliatte’s attorney, Greg Easter. Aladdin, through its employees, contacted GGC in order to collect the debt. GGC referred Aladdin to Easter, who told Aladdin that Gilliatte no longer maintained any interest in GGC. In late 2005, Gilliatte sent Caesar’s a personal check to satisfy some of his outstanding balance, but the check bounced. In early 2006, Oddo contacted Gilliatte via e-mail and threatened criminal prosecution if he did not pay. Easter notified Oddo that Gilliatte was ill and that Easter maintained a Power of Attorney to pay all of Gilliatte’s outstanding debts.

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In 2006, Gilliatte passed away. After further failed attempts to recoup the debt, the casinos cashed the markers secured by GGC's Chase business account, even though GGC notified the casinos that Gilliatte no longer had any interest in the account. Unaware of any wrongdoing, Chase withdrew the funds necessary to satisfy the markers from GGC's accounts and remitted payment to the casinos. When GGC noticed the unauthorized withdrawals, they notified Chase, who later refunded the money.

Chase brought this suit against the casinos alleging that the casinos had fraudulently misrepresented or negligently converted its money. The casinos moved to dismiss for lack of personal jurisdiction and *forum non conveniens*, and, without any specific findings or conclusions, the trial court granted the motion, stating that personal jurisdiction did not exist and, even if it did, Indiana is an inconvenient forum. Chase now appeals.

## DISCUSSION

### I. Personal Jurisdiction

#### A. Standard of Review

Courts of appeal review the issue of personal jurisdiction under a de novo standard. *LinkAmerica Corp. v. Albert*, 857 N.E. 2d 961, 966 (Ind. 2006); *Am. Econ. Ins. Co. v. Felts*, 759 N.E. 2d 649, 653 (Ind. Ct. App. 2001). However, to the extent that the trial court found facts to support jurisdiction, those facts will be reviewed for clear error. *LinkAmerica*, 857 N.E. 2d at 966.

Personal jurisdiction is the "court's power to bring an individual to its adjudicative process" and to enforce a judgment against them. *Felts*, 759 N.E. at 653 (quoting *Black's Law Dictionary*, 857 (7th ed. 1999)). A court must determine whether the exercise of personal jurisdiction comports with the Federal Due Process Clause.

Under the Due Process Clause of the Fourteenth Amendment, a state is required to demonstrate that a party has sufficient

minimum contacts such that the court's exercise of personal jurisdiction does not offend "traditional notions of fair play and substantial justice." *Id.* At 967 (quoting *Int'l Shoe Co. v. Wash.*, 32 U.S. 310, 316 (1945)). "If the defendant's contacts with the state are so 'continuous and systematic' that the defendant should reasonably anticipate being haled into the courts of that state for any matter, then the defendant is subject to general jurisdiction ...." *Id.* ; see *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 415 n.9 (1984). General jurisdiction extends to even those claims unrelated to the defendant's contact with the forum state. *LinkAmerica*, 857 N.E. 2d at 967.

However, if the defendant's contacts are not "continuous and systematic," a defendant's particular contact with the forum state may subject it to that state's specific jurisdiction. *Id.* At 968. Specific jurisdiction is based on whether a "defendant purposefully availed itself of the privilege of conducting activities within the forum state so that the defendant reasonably anticipates being haled into court there." *Id.* (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474-75 (1985)). A defendant's single act may be sufficient to satisfy specific jurisdiction, so long as the defendant's conduct with the forum state creates a "substantial connection" with the forum state, and the suit is based on the defendant's act. *Id.* (citing *McGee v. Int'l Life Ins. Co.*, 35 U.S. 220, 223 (1957)). A "substantial connection" does not arise from a defendant's "random, fortuitous, or attenuated contacts or of the unilateral activity of another party or a third person." *Id.* (citing *Burger King*, 471 U.S. at 475). The final due process step requires

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that, if the defendant has sufficient contacts with the forum state to establish general or specific jurisdiction, the state's exercise of jurisdiction must be reasonable. *Id.* (citing *Burger King*, 471 U.S. at 477). There are five factors to consider when determining the reasonableness of jurisdiction:

- 1) the burden on the defendant;
- 2) the forum State's interest in adjudicating the dispute;
- 3) the plaintiff's interest in obtaining convenience and effective relief;
- 4) the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and
- 5) the shared interest of the several States in furthering fundamental substantive social policies.

*Id.* (quoting *Burger King*, 471 U.S. at 476-77).

### B. Chase's Position

Chase asserts that Indiana's exercise of personal jurisdiction over the casinos is consistent with due process and is reasonable. Chase argues that Indiana courts maintain personal jurisdiction over the casinos because each created minimum contacts and a substantial connection with Indiana by causing injury here. Chase contends that the casinos' acts of knowingly sending fraudulent commercial paper to Indiana and in receiving payment established sufficient contacts with the forum state to satisfy due process. Further, Chase claims that the casinos' numerous contacts with Gilliatte and others to induce gambling and collect debts established contacts with Indiana.

### C. The Casinos' Position

#### Caesar's

Caesar's contends that the trial court correctly determined that specific personal jurisdiction was lacking because none of Caesar's Indiana contacts gave rise to the suit. Caesar's claims that this court should affirm the trial court because Chase, a company with its headquarters in Ohio, is unable to establish a requisite connection between Caesar's and Indiana.

#### Aladdin

Aladdin argues that the trial court correctly held that Indiana's exercise of personal jurisdiction would violate Due Process. Aladdin contends its advertising is not a basis for specific personal jurisdiction. Aladdin claims that it never leveraged Indiana law to collect Gilliatte's debt, and negotiating an instrument at a bank in Indiana does not create a substantial connection with Indiana. Aladdin argues specific jurisdiction also does not exist because it did not cause injury to Chase in Indiana. And, even if personal jurisdiction would satisfy Due Process, Indiana's exercise of jurisdiction over the casinos would be unfair and unreasonable.

## II. Forum Non Conveniens

### A. Standard of Review

Indiana Trial Rule 4.4 (C) and (D) provide the following standard of review:

(C) More convenient forum. Jurisdiction under this rule is subject to the power of the court to order the litigation to be held elsewhere under such reasonable conditions as the court in its discretion may determine to be just.

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In the exercise of that discretion the court may appropriately consider such factors as:

- 1) Amenability to personal jurisdiction in this state and in any alternative forum of the parties to the action;
- 2) Convenience to the parties and witnesses of the trial in this state in any alternative forum;
- 3) Differences in conflict of law rules applicable in this state and in the alternative forum; or
- 4) Any other factors having substantial bearing upon the selection of a convenient, reasonable and fair place of trial.

(D) Forum Non Conveniens—Stay or Dismissal. No stay or dismissal shall be granted due to a finding of *forum non conveniens* until all properly joined defendants file with the clerk of the court a written stipulation that each defendant will:

- 1) submit to the personal jurisdiction of the courts of the other forum; and
- 2) waive any defense based on the statute of limitations applicable in the other forum with respect to all causes of action brought by a party to which this subsection applies.

### B. Chase's Position

Chase claims that the presence and prevalence of nonparty witnesses in Indiana warrants the reversal of the trial court's determination that Indiana is a *forum non conveniens*.

### C. The Casinos' Position

#### Caesar's

Caesar's argues that the trial court properly held *forum non conveniens*, and that Chase's action should be heard in Nevada. However, before Caesar's begins its argument to support *forum non conveniens*, it "criticizes" this court for proceeding to the merits of the casinos' alternative defense, and instead, argues that for efficiency purposes, this court should first review the trial court's *forum non conveniens* finding on the less stringent abuse of discretion standard.

#### Aladdin

Aladdin contends that the trial court properly held that Indiana would be a *forum non conveniens*. Specifically, Aladdin argues that it would be inconvenient to try this matter in Indiana because its employees are not in Indiana and its nexus with Indiana is completely involuntary. Instead, Aladdin states that Nevada is the most appropriate forum because it has a substantial interest in regulating Chase's claim, and Chase has a branch in Nevada. Aladdin argues that litigation is especially appropriate in Nevada where it would "toe the boundary of due process."

## **TODAY'S PANEL OF JUDGES**

### **Hon. James S. Kirsch (Marion County), Presiding**

- **Judge of the Court of Appeals since March 1994**

**James S. Kirsch** was appointed to the Court of Appeals in March 1994 and served as Chief Judge from March 1, 2004 to February 28, 2007. A native of Indianapolis, Judge Kirsch is a graduate of the Indiana University School of Law at Indianapolis (J.D., cum laude, 1974) and Butler University (B.A. with honors, 1968).

Judge Kirsch served as Judge of the Marion Superior Court from 1988 to 1994 and as presiding judge of the court in 1992. From 1974 to 1988, he practiced law with the firm of Kroger, Gardis & Regas in Indianapolis in the areas of commercial and business litigation and served as managing partner of the firm. Since 1990, he has held an appointment as Visiting Professor of Law and Management at the Krannert Graduate School of Management at Purdue University.

Judge Kirsch is a past-president of the Indianapolis Bar Association and of the Indianapolis Bar Foundation and is a former member of the Board of Visitors of the Indiana University School of Law-Indianapolis. He is a past-president of the United Way/Community Service Council Board of Directors and a current or

former member of the Board of Directors of the United Way of Central Indiana, of the Board of Associates of Rose Hulman Institute of Technology, and of the Boards of Directors of the Goodwill Industries Foundation of Central Indiana, Community Centers of Indianapolis, the Indianapolis Urban League, the Legal Aid Society of Indianapolis, and the Stanley K. Lacy Leadership Association. He is a Fellow of the Indiana State Bar Foundation and of the Indianapolis Bar Foundation.

Judge Kirsch is a frequent speaker and lecturer and has served on the faculty of more than 200 continuing legal education programs. He has been named a Sagamore of the Wabash by four different governors.

Judge Kirsch and his wife have two children. He was retained on the Court in 1996 and 2006.

The Court of Appeals hears oral argument at venues across the state to enable Hoosiers to learn about the judicial branch.

This initiative began statewide just prior to the Court's centennial in 2001.

**Today's oral argument is the 203rd case the Court of Appeals has heard "on the road" since early 2000.**

**Sites for traveling oral arguments are often law schools, colleges, high schools, and county courthouses.**



## TODAY'S PANEL OF JUDGES

### **Hon. Margret G. Robb (Tippecanoe County)**

- Judge of the Court of Appeals since July 1998

**Margret G. Robb** was appointed to the Indiana Court of Appeals in July 1998 by Gov. Frank O'Bannon. She holds a B.S. and M.S. in Business Economics from Purdue, and is a 1978 Magna Cum Laude graduate of Indiana University School of Law - Indianapolis.

Prior to joining the Court, Judge Robb was engaged in the general practice of law for 20 years in Lafayette and was a Chapter 11, 12 and a Standing Chapter 7 Bankruptcy trustee for the Northern District of Indiana; and the Federal Advisory Committee for the expediting of Federal Litigation. She was a registered family and civil law mediator and served as a Tippecanoe County Deputy Public Defender. She chairs the Supreme Court Task Forces on Family Courts, the development of Trial Court Local Rules, and is involved in several projects to benefit the Indiana legal system. She has also served as a member of the Indiana Board of Law Examiners, the Governance Committee of the Supreme Court IOLTA (Interest On Lawyers' Trust Accounts) Committee; the Federal Advisory Committee on Local Rules for the Federal Court for the Northern District of Indiana; and Federal Advisory Committee for the expediting of Federal Litigation.

Judge Robb has held numerous Board positions for and been an officer for the Indiana State Bar Association, Indiana Bar Foundation, Tippecanoe County Bar Association, Indianapolis Bar Association, Indianapolis Bar Foundation, American Bar Foundation, National Association of Women Judges, Indiana University School of Law at Indianapolis Alumni Association, and speaks frequently on legal topics for attorneys and other judges. Judge Robb was Founding Chair of the Governor Otis Bowen's Commission on the Status of Women; was a recipient of the 1993 Indiana State Bar Association's "Celebrating 100 Years of Women in the Legal Profession" award; the 2001 Maynard K. Hine distinguished alumni award, given in recognition of support and service to IUPUI and Indiana University; the 2004 Bernadette Perham "Indiana Women of Achievement" Award, bestowed by Ball State University in honor of one of their outstanding professors; the 2005 Indiana State Bar Association's Women in the Law Recognition Award; and the 2006 Tippecanoe County YWCA Salute to Women "Women of Distinction" Award.

Judge Robb, who was retained on the Court of Appeals by election in 2000, is married to a professor at Purdue. Their son, a graduate of the United States Naval Academy, is on active duty in the United States Navy.

The 15 judges of the Indiana Court of Appeals issue more than 2,500 written opinions each year.

The Court of Appeals hears cases only in three-judge panels. Panels rotate three times per year. Cases are randomly assigned.



## TODAY'S PANEL OF JUDGES

### Hon. Nancy H. Vaidik (Porter County)

- Judge of the Court of Appeals since January 2000



**Nancy H. Vaidik** was appointed to the Court by Governor Frank O'Bannon on January 19, 2000. She grew up in Portage, Indiana, and graduated from Valparaiso University with High Distinction in 1977. She earned her law degree from the Valparaiso University School of Law in 1980.

Prior to her elevation to the appellate court, Judge Vaidik served as a trial court judge in Porter County for seven years. She began her legal career with the Porter County Prosecutor's Office, and was chief deputy prosecutor before joining the law firm of J.J. Stankiewicz and Associates in Merrillville, Indiana. In private practice, Judge Vaidik specialized in civil law, including domestic relations, probate, government law, and general litigation. In 1985, she founded the Porter County Sexual Assault Recovery Project, and from 1990 to 1992 was the attorney for Caring Place, Inc., a shelter for battered women.

Judge Vaidik is committed to legal education; she is an adjunct professor of law at Indiana University School of Law in Bloomington and currently serves as a visiting professor at the College of Law of England and Wales. For 14 years, from 1986 to 2000, she taught trial advocacy at her alma mater, the Valparaiso University School of Law, where she co-founded the Mediation Clinic in 1997.

Judge Vaidik does not limit her educational contributions to the classrooms of law schools. Committed to the ongoing education of her fellow lawyers, she also teaches or has taught for the National Institute for Trial Advocacy;

For the Indiana Judicial Center in several topic areas for the past 11 years; for the Indiana Prosecuting Attorney Council on evidence; and for the Indiana Continuing Legal Education Foundation (ICLEF) and the Indiana State Bar Association in seminars since 1994.

Judge Vaidik served on the Board of Managers of the Indiana Judge's Association for eight years, serving as its secretary-treasurer, vice president, and president. She has served as an Advisory Board member of the Indiana Women in Law Conference since 2000. She has also been involved in the Indiana Judicial Center's Mentor Judge Program.

In 2007, Judge Vaidik was named an *Indiana Lawyer* Distinguished Barrister and received the National Institute for Trial Advocacy Robert Keeton Faculty Award. She received the 2003 Paragon of Justice award from the BLSA and HLSA chapters at Valparaiso University School of Law and in 2004, the Indiana State Bar Association's Women in Law Achievement Award. In 1996, the Indiana Domestic Violence Coalition named her Judge of the Year. She has twice received a Sagamore of the Wabash from Indiana's governor.

Judge Vaidik is a member of the American and Indiana State Bar Associations as well as the Sagamore Inn of Court. She was retained on the Court of Appeals by election in 2002, and is married and has two daughters.

## ATTORNEYS FOR THE PARTIES

### **For Appellant, J.P. Morgan Chase:**

**Joseph C. Chapelle  
Barnes & Thornburg LLP  
Indianapolis**



**Joseph C. Chapelle** is a partner in Barnes & Thornburg LLP's Indianapolis office. He practices primarily in the Litigation Department and handles products liability and insurance coverage matters as well as general litigation.

Mr. Chapelle received a B.A. in 1983 from the University of Michigan with a double major in Spanish literature and language and with honors in history. In 1986, he was awarded his J.D. *cum laude* by Notre Dame Law School, where he served on the *Notre Dame Law Review*. After graduation, Mr. Chapelle served as law clerk to the Honorable John L. Coffey, circuit judge, United States Court of Appeals for the Seventh Circuit.

In 1987, Mr. Chapelle joined the U.S. Army's Judge Advocate General's Corps, fulfilling a four-year ROTC scholarship commitment. He gained litigation experience as a captain, prosecuting courts-martial, through an appointment as a special

assistant United States attorney and prosecuting civilians and military personnel in the U.S. District Court. Since joining Barnes & Thornburg LLP in 1991, he has concentrated his practice in products liability defense, commercial litigation, and insurance coverage litigation. Mr. Chapelle has represented a number of clients with substantial products liability exposure. He has handled litigation in a wide variety of jurisdictions, including Illinois, New Hampshire, Washington, Wisconsin, Missouri, Mississippi, Tennessee, Georgia, Michigan, Pennsylvania, Ohio and Virginia, in addition to Indiana. Mr. Chapelle also has advised clients with issues before the Consumer Product Safety Commission.

Mr. Chapelle is admitted to practice in Indiana (1989) and Illinois (1986) as well as in the U.S. District Court for the Northern and Southern Districts of Indiana and the U.S. Court of Appeals for the Seventh Circuit.



## ATTORNEYS FOR THE PARTIES

### **For Appellee, Desert Palace, Inc. (“Caesar’s”):**

**Anne L. Cowgur**

**McTurnan and Turner (Bingham McHale)**

**Indianapolis**

**Anne L. Cowgur** was born in Mt. Pulaski, Illinois in 1970. She received her B.A. *summa cum laude* from the University of Illinois in 1992 and her J.D. *magna cum laude* from the University of Illinois College of Law in 1999, where she was a member of the Order of the Coif.

Ms. Cowgur was the Articles Editor of the University of Illinois Law Review in 1998-1999. She was admitted to the bar in 1999. She is a member of the Indianapolis, Indiana State, Seventh Circuit and American Bar Associations.



### **For Appellee, Opbiz, LLC (“Aladdin”):**

**Andrew W. Hull**

**Hoover Hull LLP**

**Indianapolis**

**Andrew W. Hull** is a founding partner with Hoover Hull LLP. He practices in the areas of fiduciary and commercial litigation, ERISA and employment, and insurance-related litigation. He has the highest professional rating (AV) provided by Martindale Hubbell. Mr. Hull is a Distinguished Fellow in the Indianapolis Bar Foundation and a member of the International Network of Boutique Law Firms.

Mr. Hull received his B.G.S. degree from the University of Michigan in 1981 and his J.D., *cum laude*, from the Indiana University School of Law-Bloomington in 1986. He served as an editor of the *Indiana Law Journal*.

Mr. Hull is a frequent speaker and author for continuing legal education seminars, including those

sponsored by the Indiana Continuing Legal Education Forum (ICLEF). He has contributed to publications and seminars on the topics of the use of expert witnesses, trial evidence issues, trial practices, commercial litigation tactics, attorneys fees for frivolous litigation, and employee benefits litigation.

Mr. Hull is a member of the Indianapolis, Indiana State, Seventh Circuit, and American Bar Associations. He is also a member of the Defense Research Institute and the Defense Trial Counsel of Indiana. He serves on the Alumni Board of Directors of the Indiana University School of Law-Bloomington. He is an active supporting lawyer for the Hoosier Environmental Council and the Indianapolis Bar Association Homeless Project.